

Amendments to the Gallatin County Subdivision Regulations concerning Water Conveyance Facilities – Approved - August 26, 2008

Highlighted text is there to give context; it is not proposed text for insertion into the regulations.

Strikethrough indicates deletion

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Section 1. General Provisions and Definitions

§1.H. Definitions

New Definition Water Conveyance Facility. Agricultural water user facilities and other facilities that convey water for agriculture, stock, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, recreation, aquifer recharge or mitigation, and all other beneficial uses set forth in Section 85-2-101, *et seq.*, MCA. These facilities include, but are not limited to, ditches, canals, pipelines, flumes, wells, infiltration galleries, diversion structures, headgates, pumps, blowoffs, swales, and associated infrastructure. This term is not intended to include a “watercourse” as defined in these regulations or any man-made structure the primary purpose of which is to convey stormwater.

Section 5. Subdivision Plan and Plat Application Submittal Requirements

§5.D. Pre-Application Plan Submittal Requirements

3. Documentation on the current status of the site, including:
 - c. Water rights, including location of ~~agricultural~~–water conveyance facilities.
8. **New Section** Notice Requirements Concerning Water Conveyance Facilities:
 - a. Where water conveyance facilities are present on-site, within 500 feet of the exterior boundaries of the proposed subdivision, or on an adjoining property, the subdivider shall provide written notice to the applicable water users and/or water conveyance facility’s authorized representatives of the proposed subdivision, provide them with a copy of the proposed subdivision layout, provide a description of any anticipated adverse effects to the water conveyance facility, provide a description of any mitigation proposed to remedy such adverse effects, and provide 45 calendar days for the water users and/or water conveyance facility’s authorized representatives to submit written comments.

- b. Notice to the water users and/or water conveyance facility's authorized representatives shall be as follows.
 - i. In the event the water conveyance facility conveys water for an incorporated or otherwise organized group of water users such as a ditch or canal company, and the water users have officially elected or otherwise appointed a representative or group of representatives, written notice shall be to the water conveyance facility's authorized representatives.
 - ii. In the event the water conveyance facility conveys water for water users that have not organized or officially elected or otherwise appointed a representative, the subdivider shall give written notice to all water users.
 - iii. In the event the water conveyance facility conveys water in a combination of the scenarios described in *i* and *ii* above, the subdivider shall give written notice to the water conveyance facility's authorized representatives, and any water users not represented by the water conveyance facility's authorized representatives.
 - iv. The Montana Department of Natural Resources and Conservation is the agency that maintains the official records for water rights. The Gallatin County Planning Department has some contact information for ditches and canals in Gallatin County.
- c. The pre-application shall include a sworn statement from the subdivider listing the names and contact information for the water users and water conveyance facility's authorized representatives that were provided with written notice, and the date they were provided written notice.
- d. If the water users and/or water conveyance facility's authorized representatives have provided the applicant with written comments, those comments shall be submitted with the pre-application.
- e. If there are changes to the project between the pre-application and preliminary plat application stage that would result in additional impacts to the water conveyance facility, or the subdivision did not require a pre-application, the subdivider shall comply with the notice and documentation requirements described above to be submitted with the preliminary plat application.

§5.E. Submittal Requirements for all Subdivision Applications for Preliminary Plat Review

- 5.g **New Section** Important Land Features: Important land features shall be shown and clearly labeled on the preliminary plat. Important land features include, but are not limited to the following: watercourses, water conveyance facilities (in the case of irrigation ditches, canals, or pipelines, the centerline shall be shown on the plat), drainage ditches or channels, wetlands or other areas of seasonal water ponding, areas within the designated floodplain, marsh areas, and areas of geologic hazards as described by Section 9.D of these regulations.
15. ~~Documentation of~~ existing easements, including those for Agricultural Water User-water conveyance facilities. Where the water users and/or water conveyance facility's authorized representatives have provided the subdivider with written comments, those comments shall be submitted with the preliminary plat application.

Section 6. Design and Improvements Standards, General.

§6.A. General Standards.

2. ~~Natural Environment~~ General Design: The design and development of the subdivision shall, insofar as it is possible minimize adverse impacts to agriculture, water conveyance facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety.; preserve or enhance the natural terrain, prominent ridgelines, natural drainage, floodplain, existing topsoil, trees, and natural vegetation. Where a subdivision is expected to have an adverse impact on any of the above, the preliminary plat application shall describe such impacts and propose mitigation.

6. New Section Mitigation of Impacts on Water Conveyance Facilities.

- a. Where a water conveyance facility is located on or adjacent to property proposed for subdivision, the subdivider shall mitigate adverse impacts of the subdivision on the water conveyance facility. Mitigation shall include the requirements of *i* or *ii* below, and any other methodology necessary to mitigate adverse impacts on the water conveyance facility. Mitigation shall be reasonable, based on site-specific conditions, and shall address any comments received from the water users and or water conveyance facility's authorized representatives.
- i. Establishment of water conveyance facility non-interference setbacks as described in Section 6.A.6(b) of these Regulations is

required in the event water conveyance facilities exist or will be established on the property being subdivided and such facilities convey water through the property being subdivided to lands adjacent to or beyond the subdivision. Water conveyance facility non-interference setbacks may also be required on the property being subdivided when a water conveyance facility is located on land adjacent to the proposed subdivision.

- ii. Establishment of water conveyance facility easements as described in Section 6.D.3(b) of these Regulations is required in the event water conveyance facilities exist or will be established on the property being subdivided and such facilities provide water for use on land within the subdivision, and do not convey water through the property being subdivided to lands adjacent to or beyond the subdivision.

b. Water Conveyance Facility Non-Interference Setbacks

- i. The preliminary and final plats shall show the water conveyance facility non-interference setback as set forth in Section 6.A(6)(a) above. This setback shall be reasonable and of sufficient width to provide for the unobstructed passage and delivery of water, unobstructed access, inspection, use, routine maintenance, repair, and construction related to the water conveyance facility, and shall be based on site-specific conditions and shall address comments from the water users and/or water conveyance facility's authorized representatives. This setback shall extend on both sides of the water conveyance facility and shall be measured from the centerline along a horizontal plane.
 - ii. To assure non-interference with water conveyance facilities, no livestock grazing shall take place, nor shall any new structures (other than structures for the maintenance and operation of the water conveyance facility), fences, landscaping (other than grass), or roads be installed, or erected within the water conveyance facility non-interference setback, except where agreed to in writing by the water users and/or water conveyance facility's authorized representatives.
- c. Where the subdivider has not received comments from the water users or water conveyance facility's authorized representatives, or where the subdivider is not in agreement with the mitigation requested by water users or water conveyance facility's authorized representatives, the following shall take place:
- i. the preliminary plat shall show a default 50-foot water conveyance facility non-interference setback as described in Section 6.A(6)(b)(i) above, or required water conveyance facility

easements as described by in Section 6.D(3)(b) of these Regulations; and

- ii. if the subdivider, water users, or water conveyance facility's authorized representatives are of the opinion that, based on site specific conditions, the water conveyance facility non-interference setback should be different than the default setback, a written request justifying the proposed alternate setback shall be submitted with the preliminary plat application, and a copy of the written request shall be sent to the other applicable parties; and
- iii. At the hearing on the preliminary plat application, the Commission:
 - shall consider the site-specific conditions and any information entered into the record regarding the water conveyance facility;
 - may impose conditions of preliminary plat approval as necessary to adequately mitigate adverse impacts on the subject water conveyance facility; and
 - may require the width of the water conveyance facility non-interference setback to be greater than or less than the default width if site-specific conditions so warrant.
- d. Any mitigation of water conveyance facilities required as a condition of preliminary plat approval shall be agreed to in writing by the subdivider prior to issuance of final plat approval. Such written agreement shall be filed with the Clerk and Recorder when the final plat is recorded and shall include language to assure the mitigation requirements are binding upon all successors in interest and remain in effect until such time that the water conveyance facility is abandoned in accordance with the requirements of Montana Law or alternative requirements are agreed to in writing by all applicable parties.
- e. Water conveyance facility non-interference setbacks do not eliminate any secondary easement for maintenance and repair of the water conveyance facility as described by Section 70-17-112, MCA. Subdividers shall consider the specific terms and requirements of any such secondary easement(s) when designing a subdivision to ensure a buildable location on each developable lot.
- f. Before any maintenance, improvements, or modifications are performed on any water conveyance facility, written permission must be obtained from the water users and/or water conveyance facility's authorized representatives.

§6.B. Lots.

9. New Section Location in regard to water conveyance facilities:

- a. No developable lot may be created in which any portion of a water conveyance facility is located.
- b. The Commission may waive this standard at the request of the subdivider without need for a variance where such action is agreed to in writing by the water users and/or water conveyance facilities authorized representatives. Where such agreement cannot be reached, the subdivider may request a variance in accordance with the requirements of Section 13 of these regulations.

§6.D. Easements.

3. ~~Drainage and Irrigation Maintenance Easements~~ for Water Conveyance Facilities; ~~shall meet the following standards:~~

- ~~a. Where the land to be subdivided is traversed by a drainage way, irrigation ditch, canal, or below ground pipeline, easements or rights of way shall be required that are in locations of appropriate topographic characteristics and sufficient width, to allow for the physical placement and unobstructed maintenance of drainage ways, open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots; are sufficient distance from the centerline of the ditch to allow construction, repair, maintenance, and inspection of the ditch; and prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.~~
- ~~b. Drainage ways, irrigation canals/ditches, and below ground pipelines, shall require a minimum width of such easement to be twenty feet (20'); fifteen feet (15') on one side and five feet (5') on the other side of the waterway, or the width required by the legal user of the waterway for maintenance purposes. Before any maintenance or improvements are performed on any drainage way, irrigation ditch, or canal, or below ground pipeline, the legal user of the waterway must give written permission for the work to be done.~~
- a. Where easements have been filed, recorded, or otherwise officially established for water conveyance facilities that convey water through the property being subdivided to lands adjacent to or beyond the

subdivision, such easements shall be shown on the preliminary and final subdivision plats in addition to the water conveyance facility non-interference setback described in Section 6.A.6 of these Regulations.

- b. Where water conveyance facilities exist or will be established on the property being subdivided and such facilities provide water for use on land within the subdivision, and do not convey water through the property being subdivided to lands adjacent to or beyond the subdivision, easements shall be established that:
 - i. are in locations of appropriate topographic characteristics and sufficient width to allow for the physical placement and unobstructed maintenance of water conveyance facilities for the delivery of water to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
 - ii. are sufficient distance from the centerline of the ditch to allow construction, repair, maintenance, and inspection of the ditch; and
 - iii. prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- c. Establishment of easements as described in part b above is~~are~~ not required if:
 - i. the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the Commission, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or
 - ii. the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.
- d. Interference with canal or ditch easements is prohibited as described by Section 70-17-112, MCA. The subdivision shall be designed to maintain or enhance access to any such easements.

- d. ~~The subdivider shall, unless otherwise provided for under separate written agreement or filed easement, file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, canals, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights.~~

§6.Q. New Section Stormwater Management.

Unless there is written consent from the appropriate water users and/or water conveyance facility's authorized representatives, the subdivision shall be designed and developed so stormwater, snowmelt runoff, water from dewatering activities, or other water originating from within the boundaries of the subdivision, does not run into or become captured by any water conveyance facility.

Section 9. Environmental Assessment

§9.E. Summary of Probable Impacts Criteria.

2. The effect on agricultural water user facilities and other water conveyance facilities and proposed mitigation of adverse impacts. The terms *agricultural water user facility* and *water conveyance facility* are defined in Section 1 of these Regulations. ~~as those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities.~~
- a. Type, description, ownership, and users of facilities.
- b. Describe conflicts the subdivision would create with agricultural water user facilities and water conveyance facilities (e.g. residential development creating problems for operating and maintaining irrigation systems) and whether ~~agricultural water users~~ such facilities would be more subject to vandalism or damage because of the subdivision.
- c. Describe possible nuisance problems that the subdivision would generate with regard to agricultural water user facilities and water conveyance facilities (e.g. safety hazards to residents or water problems from irrigation ditches, headgates, siphons, sprinkler systems, or other agricultural water user facilities or water conveyance facilities).

- d. Where the water users and/or water conveyance facility's authorized representatives have provided the subdivider with written comments, those comments shall be submitted with the preliminary plat application.
- e. Additional information as needed.

Appendix K: New Appendix Commonly Required Conditions of Approval and Covenants:

- A. **Intent.** The following conditions and covenants are commonly required as part of the subdivision review and approval process in Gallatin County. The primary purpose of this appendix is to give applicants an idea of some of the conditions and covenants that may be attached to the approval of their project. While the Planning Department attempts to utilize standard conditions, please be aware that these conditions and covenants are likely to change as the subdivision review process evolves, and as site-specific conditions may warrant.

B. Conditions and Covenants Related to Water Conveyance Facilities

1. Conditions Related to Water Conveyance Facilities:

- a. Water conveyance facilities and the required water conveyance facility non-interference setback shall be shown on the final plat and clearly labeled. Plats shall depict irrigation ditches, canals, or pipelines by their centerline.
- b. The following note shall appear on the final subdivision plat: "Any water conveyance facility non-interference setback or easement shown on the subdivision plat does not eliminate any secondary easement described by Section 70-17-112, MCA."
- c. Unless there is written consent from the appropriate water users and/or water conveyance facility's authorized representatives, stormwater, snowmelt runoff, water from dewatering practices, or other water originating from within the boundaries of the subdivision shall not discharge into or otherwise be directed into any irrigation ditch, canal, pipeline, or other water conveyance facility.
- d. The subdivider shall not undertake any activity that would result in the interference or obstruction in the transmission of water in any water conveyance facility. Before any maintenance, improvements, or modifications are performed on any water conveyance facility, written permission must be obtained from the water users and/or water conveyance facility's authorized representatives. Upon completion of maintenance, improvements, or modifications to any water conveyance facility, the

subdivider shall provide written notice to the water users and/or water conveyance facility's authorized representatives and allow them an opportunity to inspect such work.

2. Standardized Covenants Related to Water Conveyance Facilities:

- a. No water may be removed from any irrigation ditch, canal, or other water conveyance facility without a water right, permit, or written water lease agreement with the appropriate water users and/or water conveyance facility's authorized representatives.
- b. Unless there is written consent from the appropriate water users and/or water conveyance facility's authorized representatives, stormwater, snowmelt runoff, water from dewatering practices, or other water originating from within the boundaries of the subdivision shall not discharge into or otherwise be directed into any irrigation ditch, canal, pipeline, or other water conveyance facility.
- c. The Owners' Association shall remove any trash or debris that originated from within the subdivision and has accumulated in the water conveyance facilities passing through their subdivision by no later than May 1st of each year. If the Owners' Association fails to remove the trash or debris as described above, the water users and/or water conveyance facility's authorized representatives may cause the trash or debris to be removed and bill the Owners' Association for such efforts. Until such time that the Owners' Association assumes responsibility for the requirements described herein, such requirements shall be the responsibility of the developer.
- d. Lot owners are hereby notified of the water users, water conveyance facility's authorized representatives, and/or their designee's right to access the property to maintain and repair the water conveyance facility (this includes, but is not limited to, placement of excavated material, removal of vegetation and debris along the water conveyance facility); to install, repair, and or adjust headgates and other diversion structures; and to carry out other normal means of repair and maintenance related to the ditch/canal.
- e. To assure non-interference with water conveyance facilities, no livestock grazing shall take place, nor shall any new structures (other than structures for the maintenance and operation of the water conveyance facility), fences, landscaping (other than grass), or roads, may be installed or erected within the water conveyance facility non-interference setback, except where agreed to in writing by the water users and/or water conveyance facilities authorized representatives. (NOTE: Where the water users and/or water conveyance facility's authorized representatives agree to something else as part of the subdivision review process, this covenant would need to be amended to reflect those changes.)

- f. Neither the Owners' Association nor any lot owners shall undertake any activity that would result in the interference or obstruction in the transmission of water in the water conveyance facility. Before any maintenance, improvements, or modifications are performed on any water conveyance facility, written permission must be obtained from the water users and/or water conveyance facility's authorized representatives prior to commencing such work. Upon completion of maintenance, improvements, or modifications to any water conveyance facility, the person responsible for such work shall provide written notice to the water users and/or water conveyance facility's authorized representatives and allow them an opportunity to inspect such work.
- g. Lot purchasers are hereby notified that Montana law provides specific protections in regards to liability and nuisance claims for agricultural operations and irrigators. Those specific protections include, but are not limited to Section 85-7-2211, MCA; Section 85-7-2212, M.C.A; and Section 27-30-101, MCA.